IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7748 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SIRAJ USMANGANI MANSURI & 3 - Petitioner(s)
Versus
KALPATARU HIGHBREED SEEDS PVT LTD & 1 - Respondent(s)

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Appearance :

MR GIRISH D BHATT for Petitioner(s) : 1 - 4.
RULE UNSERVED for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR DR BHATT for Respondent(s) : 2,
MR AS SAIYED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/04/2007

ORAL JUDGMENT

1. In this petition, the petitioners claiming to be the landlords of an immovable property(here-in-

after referred to as “the suit property”) have challenged legality of an order dated 19th January, 2006 passed by learned Judge of Small Causes Court, Ahmedabad below exh.10 in H.R.P. Suit No.901/1999. The said suit was filed by the petitioners seeking recovery of the suit property from the original sole defendant i.e. respondent no.1 herein. In that civil suit, respondent no.2 herein moved an application seeking to be joined as party defendant. It was this application which learned Judge by his impugned order granted.

2. It is the case of the respondent no.2 herein that she has by virtue of certain developments become the owner of the suit premises. Learned Judge was of the opinion that by impleading her as third party of this suit, she will be in a position to focus on the crux of the suit and same would be helpful to the Court also to come to the right conclusion. It was therefore, found that she being a proper and necessary party, should be added as party in the suit.

3. Learned advocate Shri Girish D. Bhat appearing for the petitioner sought to assail the impugned order on the ground that respondent no.2 herein was neither necessary nor a proper party. If at all, she could have instituted a separate proceeding to establish her ownership or possessory rights, but she cannot be joined as a

defendant in the rent suit instituted by the petitioners against their tenant. It was contended that the Rent Court cannot decide the question of ownership rights. Reliance in this regard is placed on the decision of **Talib Hussain v. Peer Azhar Hussain and others** reported in AIR 1998 Rajasthan 150 and **Kamla Devi and others v. Surinder Kumar and others** reported in 2006(2) RCR 484.

4. On the other hand, learned advocate Shri D.R. Bhatt for respondent no.2 supported the order under challenge.

5. Having heard learned advocates for the parties and having perused the material on record, I find that the order does not call for interference in exercise of powers under Article 227 of the Constitution of India. It may be noted that the petitioners themselves have filed another rent suit no.170/1999 in which respondent no.2 has been joined as defendant. In that view of the matter, no prejudice will be caused to the petitioners even if respondent no.2 herein is permitted to be joined as party in the rent suit under consideration. Only on this ground, I do not find it necessary to interfere with the impugned order. No doubt the Rent Court will take into consideration the contentions of the petitioners as and when raised that while disposing of the said rent

suit, Rent Court cannot decide the question of ownership rights.

6. In the result, the petition is rejected and disposed of accordingly. Rule is discharged. No costs. Interim relief vacated.

(Akil Kureshi,J.)

(raghu)